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**VIA FACSIMILE: (703) 308-6916
ATTENTION: OFFICE OF PETITIONS**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS : WILLIAM F. MAIER
SERIAL NO. : 09/254,525
FILED : March 8, 1999
FOR : USE OF MICROPOROUS CATALYSTS
ART UNIT : 1754
EXAMINER : S. Hendrickson

**FAX RECEIVED
MAY 12 2003
PETITIONS OFFICE**

May 12, 2003

BOX DAC

Hon. Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**SECOND RENEWED PETITION UNDER 37 CFR § 1.181(a)
TO WITHDRAW HOLDING OF ABANDONMENT OR ALTERNATIVELY
FIRST PETITION UNDER 37 CFR § 1.137(b)
TO REVIVE UNINTENTIONALLY ABANDONED APPLICATION**

SIR:

Applicant filed an original petition on August 12, 2002, to have withdrawn the holding that the above-identified application was abandoned. The decision dated December 19, 2002, dismissed Applicant's first petition as being deficient. Applicant then filed a first renewed petition on February 19, 2003. The second decision dated March 10, 2003, dismissed the

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renewed petition also as being deficient. According to the second decision, Applicant's only recourse is a petition under 37 CFR § 1.137(b). However, the first paragraph on page 3 of the second decision permits a second renewed petition, and the undersigned spoke to Mr. Shanoski on March 26, 2003, and he confirmed that Applicant could petition for relief in the alternative. Accordingly, pursuant to that conversation, Applicant now presents this second renewed petition to have the holding of abandonment withdrawn or, failing that, this first petition to have the application revived to pending status.

Second Renewed Petition to Withdraw the Abandonment

The showing of record apparently is sufficient to prove that the Office Action dated August 10, 2001, was never received by Applicant. See the third paragraph on page 2 of the second decision. “[I]t certainly appears that the Office Action truly was not received.” Applicant believe that should end the matter, but the second decision, in a holding quite different from the first, finds that although the Office Action was not received by Applicant, nevertheless, the holding of abandonment cannot be withdrawn.

The problem in this case, according to the second decision, is that the undersigned did not notify the Patent Office quickly enough of his change of correspondence address. See the sixth paragraph on page 2 of the second decision. “Petitioner’s failure to notify the Office contemporaneously with his Change of Correspondence Address precludes Petitioner later demanding withdrawal of the holding of abandonment.”

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This position taken by the second decision is unsupported by reference to any decisional law, or to the Manual of Patent Examining Procedure. Moreover, it overlooks certain realities attendant with extremely large dockets, and, most importantly, it punishes Applicant in a situation wherein Applicant's failure was not responsible for his non-receipt of the Office Action.

The position taken by the second decision takes a particularly and unduly harsh view, and, as noted above, is not supported by reference to any decisional law, or to the Manual of Patent Examining Procedure. While an attorney or agent has a responsibility to notify the Patent Office promptly of his change of address, it does not logically follow that a failure to do so "precludes" requesting a withdrawal of the holding of abandonment. The one thing (the abandonment), as here, may have nothing whatsoever to do with the other (the failure to supply the new correspondence address). If the abandonment should not be occasioned by petitioner's failure promptly to notify the Patent Office of his or her change of address, there is no good reason why that holding of abandonment should not be withdrawn simply because the change of address was not promptly communicated.

The second decision ignores the realities attendant with extremely large dockets, which the undersigned has. It may, in fact, take some time to communicate the change of address in such a large number of cases, and this work was started diligently and immediately, but it could not be completed "contemporaneous" with the move.

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However, and this is the important point, the undersigned had the Post Office forward all mail from his old address to his new address. Attached as Exhibit 1 is a copy of an envelope proving that the Post Office was still forwarding mail from the old address of the undersigned to the new address of the undersigned as late as October 2001. Consequently, there was no good reason why the Office Action dated August 10, 2001, even though it was addressed to the old address, was not forwarded to the new address.

The Patent Office, presumably, will accept the efficiency of the Post Office. Applicant's failure to file a change of address contemporaneous with the movement of the undersigned was not the reason the Office Action dated August 10, 2001, was not received. Since the undersigned had his mail forwarded from his old address to his new address, there was as much reason to expect that mail addressed to the old address would reach him as there was to expect that mail addressed to the new address would reach him. Accordingly, the failure of a particular piece of mail to reach him was, in fact, not due to his failure to notify the Patent Office of his change of address "promptly." The Post Office was aware of the change of address and was acting pursuant to that change and was, in fact, forwarding mail from the old address to the new address. Therefore, the Office Action dated August 10, 2001, should have been forwarded to the undersigned's new address, and the fact that it was not should be grounds for removing the holding of abandonment.

In view of the foregoing, Applicant submits that this second renewed petition should be granted. An early notice that this second petition has been granted is earnestly solicited.

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First Petition to Revive the Abandoned Application

Failing the grant of the second renewed petition to withdraw the holding of abandonment, Applicant petitions to revive the abandoned application.

According to 37 CFR § 1.137(b), a grantable petition must be accompanied by:

- (1) the reply required to the outstanding Office Action or notice;
- (2) the petition fee as set forth in § 1.17(m);
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional; and
- (4) a terminal disclaimer, if required by section (d) thereof.

With respect to (1), there is attached a reply to the final rejection. The reply includes an amendment and a Notice of Appeal.

With respect to (2), the Commissioner is authorized to charge this fee and any other fees deemed due to Deposit Account No. 14-1263. The Applicant is a small entity.

With respect to (3), the undersigned hereby states that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional.

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Finally, with respect to (4), no terminal disclaimer is necessary since this application was filed after June 8, 1995.

In view of the foregoing, if the second renewed petition to withdraw the holding of abandonment is not granted, then Applicant requests that this application be revived to pending status.

Early and favorable action is earnestly solicited.

Respectfully submitted,

NORRIS McLAUGHLIN & MARCUS, P.A.

By

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that the foregoing petition and Exhibit 1 (7 pages total) are being facsimile transmitted to the United States Patent and Trademark Office on the date indicated below:

Date: May 12, 2003

By

Kurt G. Briscoe

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May 12, 2003

TO: Office Of Petitions
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Applicant: William F. Maier

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FROM: Kurt G. Briscoe **PETITIONS OFFICE**

ATTY. DOCKET NO **100716-23 / Studien 262- KGB**

MESSAGE:

I hereby certify that the following papers are being facsimile transmitted to the Patent and Trademark Office on the date shown below:

- Second Renewed Petition Under 37 CFR §1.181(a) to Withdraw Holding of Abandonment - 6 Pages
- Exhibit 1-1 page
- Notice of Appeal - 2 Pages
- Amendment Under 37 CFR §1.116 - 4 pages

CHARGE ALL FEES TO DEPOSIT ACCOUNT 14-1263

By Jennifer Archer Date May 12, 2003

We are transmitting 14 pages, including cover page. If the transmission is not complete, please call (212) 808-0700 and ask for Jennifer Archer at Ext. 681.

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